FILED

MAR 03 2017

JULIE RICHARDS JOHNSTON, CLERK
US DISTRICT COURT, EDNC
BY ___ DEP CLK

UNITED STATES DISTRICT COURT

for the

Eastern District of North Carolina

United States of America
v.
Jesus Cervantez-Ruiz

Defendant(s)

Case No. 7:17-mj-1058-RJ

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of March 2, 2017 in the county of Columbus in the Eastern District of North Carolina, the defendant(s) violated:

Code Section	*Offense Description*
8 U.S.C 1326(a) & (b)(2)	The defendant, an alien, was found in the United States after having previously been denied admission, excluded, deported and removed from the United States, on May 2, 2001, at Miami, Florida after having been convicted of an aggravated felony, and without having obtained the express consent of the Attorney General, or his successor, the Secretary of the Department of Homeland Security, to reapply for admission thereto.

This criminal complaint is based on these facts:

See attached affidavit

☑ Continued on the attached sheet.

Complainant's signature

Thomas B. Swivel, Special Agent HSI

Printed name and title

Sworn to before me and signed in my presence.

Date: March 3, 2017

Judge's signature

City and state: Wilmington, North Carolina

ROBERT B. JONES, JR., U.S. Magistrate Judge

Printed name and title

sk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

AFFIDAVIT

1. I, Thomas B. Swivel, am a Special Agent of the Department of Homeland Security (HSI), formerly known as Immigration and Customs Enforcement, assigned to the Wilmington, North Carolina office. I have been employed by HSI for fourteen years. Prior to being an HSI Special Agent, I was a United States Border Patrol Agent assigned to the Sonoita, Arizona office for five years. My duties routinely include the investigation of violations of the federal criminal statutes concerning immigration offenses, including the reentry of illegal aliens into the United States.

2. This affidavit is submitted as evidence of probable cause supporting the arrest warrant for Jesus Cervantez-Ruiz (hereinafter "CERVANTEZ"), for reentry by an alien after deportation subsequent to an aggravated felony conviction, in violation of Title 8, United States Code, Section 1326(a)&(b)(2).

3. In the course of investigating this matter, I have obtained information through law enforcement channels and reviewed the official Alien File (A-File) numbered 070 569 447. This file is maintained in the name of Jesus Cervantez-Ruiz and contains this individual's biographical information, family history, records of encounters with the ICE/INS, conviction

records, photographs and fingerprints. Based on the review of this A-File, I have concluded that it does in fact pertain to the individual currently in custody in this matter.

4. The A-File reflects the following information relative to this individual:

a. CERVANTEZ is a citizen and national of Guatemala.

b. His date of birth is May xx, 19xx and his name is correctly reflected in this affidavit and the complaint to which it is attached.

c. CERVANTEZ was not previously admitted into the United States as a legal immigrant.

d. CERVANTEZ was, on August 4, 1997, convicted in the General Court of Justice, Superior Court Division, Robeson County at Lumberton, North Carolina, for the offense of assault with a deadly weapon, in violation of N.C. Gen. Stat. §14-32(b), case 95CRS12914, for which he received a 20-33 months suspended sentence, with 36 months of supervised probation. This crime constitutes an aggravated felony pursuant to 8 U.S.C. § 1101(a)(43)(F).

e. CERVANTEZ was, on May 2, 2001, deported to Guatemala at Miami, Florida via TACA flight number

321, and warned of the penalties for reentry.

f. CERVANTEZ, of his own volition, re-entered the United States on or after May 2, 2001, and did so without having obtained the express permission of the Attorney General of the United States, or his successor, the Secretary of the Department of Homeland Security, to reapply for admission.

5. A search of ICE data banks reveals that CERVANTEZ did not seek permission of the United States Attorney General to re-enter as required by 8 U.S.C. § 1360(d). A certificate documenting this is expected within 30 days.

6. On March 1, 2017, your affiant received information that CERVANTEZ was identified during a traffic stop in Columbus County, North Carolina, by Columbus County Sheriff's Office Detective Kevin Norris. Detective Norris telephonically contacted your affiant and told your affiant that he received a hit confirmation response from his dispatch for a previously deported alien named Jesus Cervantez-Ruiz. Detective Norris also requested that your affiant verify that CERVANTEZ's immigration database photograph matched CERVANTEZ's North Carolina driver license photograph.

7. On the morning of March 2, 2017, your affiant interviewed CERVANTEZ at the Columbus County Detention facility

in Whiteville, North Carolina, after identifying himself as a Special Agent with Homeland Security. HSI Special Agent Addy Penniman and Columbus County Sheriff's Office Detective Kevin Norris were present during the interview. Your affiant advised CERVANTEZ of his *Miranda* rights. CERVANTEZ stated that he understood his rights, waived them, and spoke with your affiant. CERVANTEZ told your affiant that his true and correct name was Jesus Cervantez-Ruiz. CERVANTEZ said that he was born in Mexico and had documents as a citizen of Guatemala. CERVANTEZ said that he did not have immigration documents allowing him to be in the United States legally. CERVANTEZ said that he had been deported from the United States one time. CERVANTEZ said that he did not request permission from the Attorney General of the United States or the Secretary of Homeland Security to reenter the United States.

8. On the same day, your affiant submitted biometric fingerprint data on CERVANTEZ to the FBI which returned a positive match for a previously deported alien.

[remainder of page left intentionally blank]

9. Based on all of the foregoing, I, Thomas Swivel, believe that there is ample probable cause to conclude that Jesus Cervantez-Ruiz is in fact guilty of illegal reentry into the United States by an alien previously deported subsequent to an aggravated felony conviction, in violation of 8 U.S.C. § 1326(a) & (b)(2), and respectfully ask that the Court issue a warrant ordering his arrest for such crimes.

Further your Affiant sayeth not.

Thomas Swivel
Special Agent
Homeland Security Investigations

SUBSCRIBED TO AND SWORN TO BEFORE ME

THIS 3 DAY OF MARCH 2017.

ROBERT B. JONES, JR.
United States Magistrate Judge
Eastern District of North Carolina